

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
GEORGIA-PACIFIC CORPORATION,

Appellant,

**V.**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 79-8

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the partial approval of an application for tax credits, came before the Pollution Control Hearings Board, Nat Washington, chairman, and David Akana (presiding) at a formal hearing in Lacey on February 2, 1981.

Appellant was represented by its attorney, Robert Davis; respondent was represented by Jeffrey Goltz, Assistant Attorney General. Olympia court reporter Betty Koharski recorded the proceedings.

Having heard the testimony, having examined the exhibits, and

1 the Board having served its proposed decision on all parties; and the  
2 Board having received exceptions to its proposed decision from both  
3 parties; and the Board having considered said exceptions, granting  
4 them in part and denying them in part, and being fully advised in the  
5 premises, the Board now makes these

## 6 FINDINGS OF FACT

### 7 I

8 Georgia-Pacific Corporation (hereinafter "GP") is a corporation  
9 with its principal place of business in Washington at Bellingham. GP  
10 operates a wood products mill which produces pulp and paper products  
11 and certain by-products.

12 The mill uses a calcium-based acid sulfite pulping process. In  
13 the process, wood chips are cooked in large vessels (digesters) with  
14 chemicals under controlled temperature, pressure and time. The  
15 chemical cooking process separates cellulose fibers from the liquid  
16 resulting in pulp and a solution referred to as spent sulfite liquor  
17 (SSL). Evaporators concentrate the SSL from about 12.5 percent solids  
18 to a maximum of 50 percent solids. GP has used the concentrated SSL  
19 for fuel and for valuable by-products.

### 20 II

21 In 1968, the Washington Water Pollution Control Commission,  
22 predecessor agency to the Department of Ecology (DOE), issued Waste  
23 Discharge Permit No. T-2862 to GP. Under the provisions, GP was to  
24 remove 80 percent of the SSL from its effluent or to limit SSL  
25 discharges to 180 tons per day (tpd). GP conformed to the latter  
26 limitation.

1 III

2 In 1975 based on production of 620 tons per day,<sup>1</sup> DOE issued  
3 NPDES Permit No. WA 000109-1 which required GP to reduce SSL  
4 discharges to 100 tpd by June 30, 1977. After that date, further  
5 reductions were required but the SSL standard was replaced by a  
6 requirement measured by biochemical oxygen demand (BOD). SSL is a  
7 major contributor to BOD. In response to the permit requirements, GP  
8 designed and thereafter installed its No. 6 evaporator.

9 IV

10 On March 11, 1976, GP applied for certification (No. 1405) for its  
11 planned evaporator at an estimated cost of \$5,010,000. The evaporator  
12 was to have an evaporative capacity of 180,000 pounds of water per  
13 hour (pph) and capable of producing 50 percent SSL from a feedstock of  
14 13 percent SSL.<sup>2</sup> GP estimated that its feedstock was 12.5 percent  $\pm$   
15 0.5 percent solids.

16 V

17 Before the new evaporator was installed, GP operated three other  
18 evaporators. The existing evaporators met the production requirements  
19 of the plant.

20 VI

21 When GP ordered the new evaporator, the equipment was guaranteed  
22 to evaporate a minimum of 180,000 pph of water from desugared calcium  
23 lignosulfonate liquor having a feed concentration of not more than 20  
24

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25 1. Based on a seven day maximum production. GP's maximum  
26 production has been further limited to 570 tpd by a DOE order.

26 2. GP estimated that the capacity is equivalent to 390 tpd.

1 percent total solids (TS) and producing a product having 52 percent TS  
2 on a 24-hour basis. Because of its design, the efficiency of the new  
3 evaporator is not affected if the feedstock is 12.5 percent or 20  
4 percent SSL. In addition, the specifications require the evaporator  
5 to be operated on a 24-hour basis while some of its heat exchange  
6 surfaces are being cleaned.

#### 7 VII

8 During the period beginning 1968 until 1980, GP's annual pulp  
9 production has ranged from 162,612 tons minimum (1971) to 196,381 tons  
10 maximum (1980). Over the same period production averaged 176,905 tons  
11 per year or 485 tons per day. On a given day, GP's facility is  
12 capable of producing much more pulp than the average figure  
13 indicates. Its facilities are sized to handle more production than  
14 its average figure indicates.

#### 15 VIII

16 After considering GP's application, DOE determined that because no  
17 more than 180 tpd of SSL was being discharged, the maximum evaporative  
18 capacity needed was 180 tpd. Only a portion (180 tpd of the 390 tpd  
19 capacity) of the new evaporator was deemed allocated primarily for the  
20 purpose of pollution control. That portion of the tax credit  
21 application was approved by DOE as a single purpose facility.<sup>3</sup> GP  
22 appealed the determination.

23  
24 3. DOE has since discovered that water from existing production  
25 processes may be evaporated by the new equipment. As such, the  
26 evaporator may have been more properly classified as a dual purpose  
27 facility.

IX

The maximum allowable discharge before NPDES Permit WA 000109-1 was issued in 1975 was 3,600,000 pounds of water per day of 10 percent TS SSL, or 180 tons per day of solids. The NPDES permit does not purport to prohibit SSL discharges but does affect such discharges under a BOD discharge limitation.

DOE liberally credits GP with the full removal of 180 tpd in its determination. This figure is the maximum discharge that GP was previously allowed. Evaporative equipment designed for 180 tpd under ordinary operating conditions seem amply suited and sized to meet the maximum discharge that GP was allowed, including surges in production. Also, the evaporator was designed for continuous operation and maintenance.

X

In order to achieve the removal of 180 tpd solids from a 12.5 percent TS feedstock, 2,880,000 ppd (120,000 pph) of feedstock (105,000 pph water, 15,000 pph solids) must be evaporated to a maximum concentration of 50 percent solids (15,000 pph water, 15,000 pph solids; 90,000 pph water evaporated). The capacity of the No. 6 evaporator, 180,000 pph, exceeds this requirement. The No. 6 evaporator is not designed entirely for pollution control purposes. It exhibits excess capacity not related to pollution control. However, the percent of the cost allowed as a tax credit, 180/390 or 46 percent, appears to be lower than what GP should have received - 90,000/180,000 or 50 percent. On remand, DOE may further reduce this percentage to account for that portion of the feedstock which is

1 evaporated only to a 20 percent concentration.

2 XI

3 In its first year of operation, GP believed that the new  
4 evaporator could not sustain its rated capacity over extended  
5 operating periods. GP estimates that the actual average capacity of  
6 the evaporator is about 153 tpd (110,000 pph) SSL. This estimate is  
7 based on the performances of all evaporators, old and new, and is  
8 proportional to a 465 tpd SSL production. GP's figures are estimates  
9 and do not necessarily establish the actual capacity of the No. 6  
10 evaporator taken separately.

11 With respect to GP's contention that actual operating figures  
12 should be used to evaluate the application, we are persuaded that the  
13 figures presented by GP are not representative of the capabilities of  
14 its No. 6 evaporator for tax credit purposes.<sup>4</sup> Also, GP has made no  
15 claims against the manufacturer and appears satisfied that the  
16 warranties have been met. In sum, GP's evidence is not sufficient to  
17 overcome the evidence relied upon by DOE.

18 XII

19 Any Conclusion of Law which should be deemed a Finding of Fact is  
20 hereby adopted as such.

21 From these Findings, the Board comes to these  
22  
23  
24

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25 4. Accordingly, we do not address the situation where a dual  
26 purpose facility does not attain the capacity for which it was  
designed.

1 CONCLUSIONS OF LAW

2 I

3 This Board has jurisdiction over the persons and subject matter of  
4 this proceeding by authority of Whatcom County Superior Court Judgment  
5 (No. 57136).

6 II

7 GP has the burden of proof for showing that it meets all the  
8 requirements of chapter 82.34 RCW and chapter 173-24 WAC.

9 III

10 Tax credit and exemption statutes must be construed strictly  
11 against the person seeking the exemption.

12 IV

13 RCW 82.34.030 provides in part:

14 [A]pproval shall be given when it is determined that  
15 the facility is designed and is operated or is  
16 intended to be operated primarily for the control,  
17 capture and removal of pollutants from the air or for  
18 the control and reduction of water pollution and that  
19 the facility is suitable, reasonably adequate, and  
20 meets the intent and purposes of chapter 70.94 RCW or  
21 chapter 90.48 RCW. . . .

22 DOE has adopted rules which set forth its interpretation of the  
23 statute:

24 The department shall approve any facility when:  
25 (1) It was installed or intended to be installed for  
26 the primary purpose of pollution control, and;  
27 (2) When it is operated or intended to be operated  
primarily for the purpose of pollution control, and;  
(3) When it is suitable, reasonably adequate, and  
meets the intent and purposes of chapter 70.94 RCW or  
chapter 90.48 RCW;  
If the facility does not meet these criteria, it  
shall be denied.

1 WAC 173-24-080.<sup>5</sup> Subsection (1) is sometimes referred to as the  
2 "design test." WAC 173-24-090 further explains the requirement and is  
3 the provision on which this appeal is focused.

4 A facility will be considered to be installed or  
5 intended to be installed for the primary purpose of  
6 pollution control when:

7 (1) It is installed or intended to be installed  
8 in response to a requirement of the department or a  
9 regional or local air pollution control authority  
10 contained in a permit, order, or regulation which  
11 applies to the particular industry or commercial  
12 establishment in question, and such facility meets or  
13 exceeds the requirements of such permit, order, or  
14 regulation, and

15 (2) It was installed pursuant to a requirement  
16 developed under chapter 90.48 RCW or 70.94 RCW and  
17 not under some other statute administered by the  
18 department such as, for example, chapter 70.95 or  
19 70.150 RCW.

20 GP did not show that the total capacity of the No. 6 evaporator was  
21 installed or intended to be installed for the primary purpose of  
22 pollution control. The portion exceeding the maximum amount of  
23 discharge allowed before the NPDES permit (180 tpd) is not related to  
24 pollution control. The excess capacity was not installed in response  
25 to any permit, order or regulation under chapter 90.48 RCW.  
26 Accordingly, DOE's determination was essentially correct. However, we  
27 remand the matter for further consideration as limited and discussed  
in Finding of Fact X.

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23 5. Compare Weyerhaeuser Corp. v. Department of Ecology, 86 Wn.2d  
24 310 (1976).



V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The determination of the Department of Ecology on Georgia-Pacific Corporation's tax credit application No. 1405 is remanded for further consideration as indicated in Conclusion of Law IV and as limited therein.

DATED this 22<sup>nd</sup> day of June, 1981.

POLLUTION CONTROL HEARINGS BOARD

  
MATT W. WASHINGTON, Chairman

  
DAVID AKANA, Member

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3 IN THE MATTER OF                   )  
4 GEORGIA-PACIFIC CORPORATION,    )  
                                  )  
5                                   Appellant,    )  
                                  )  
6                                   v.            )  
                                  )  
7 STATE OF WASHINGTON,            )  
8 DEPARTMENT OF ECOLOGY,         )  
                                  )  
                                  Respondent.   )

PCHB No. 79-8

ORDER GRANTING MOTION  
TO DISMISS

9  
10       The hearing on respondent Department of Ecology's Motion  
11 to Dismiss the appeal of Georgia-Pacific on the ground that it was not  
12 timely filed came before the Pollution Control Hearings Board, Dave J.  
13 Mooney, Chairman, Chris Smith and David Akana (presiding), on  
14 March 1, 1979 in Lacey, Washington.

15       Respondent was represented by Jeffrey D. Goltz, Assistant  
16 Attorney General; appellant Georgia-Pacific was represented by its  
17 attorney, Robert R. Davis.

18       Having considered the Motion, the supporting and opposing

DA/LB

1 affidavits, the file and record herein and briefs of counsel, we  
2 conclude that the Motion should be granted.

3 Under the procedures set forth in chapter 82.34 RCW, a person  
4 files an application for a pollution control tax exemption and  
5 credit certificate with the Department of Revenue (DOR). The DOR  
6 forwards the application to the appropriate control agency, here,  
7 the Department of Ecology (DOE). RCW 82.34.020 and .030. The DOE makes its  
8 determination and notifies the DOR of its decision. RCW 82.34.030. Within  
9 30 days the DOR issues a certificate based upon the determination of the  
10 DOE. At the same time that the DOR is notified, a copy of the DOE decision  
11 also "shall be sent to the applicant by certified mail"<sup>1</sup> WAC 173-24-060. A  
12 aggrieved applicant may appeal the determination to the Pollution Control  
13 Hearings Board no later than 30 days after receipt of that written decision  
14 WAC 173-24-130. RCW 82.34.030 and .110; RCW 43.21B.120 and .230. WAC 311-  
15 08-080.

16 In this matter, the DOE decision dated August 7, 1978 and sent  
17 by regular mail was received by appellant's Environmental Control  
18 Director on August 9, 1978. The decision was appealed to this Board  
19 on January 19, 1979, which date is more than 30 days after the  
20 receipt of the decision.

21 Appellant contends that the motion should be denied because  
22 respondent did not send the determination dated August 7, 1978 to  
23 appellant by certified mail as required by WAC 173-24-060. There is,  
24 however, no statutory requirement that such determination be sent by  
25

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26 1. The use of certified mail with return receipt requested is  
27 equivalent to the use of registered mail. RCW 1.12.060. C.R. 5(g).

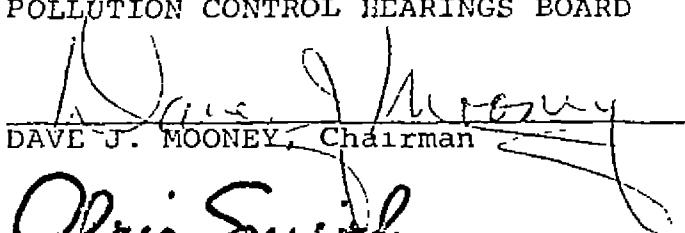
1 certified mail. Therefore, the case cited by appellant, Appeal of  
2 Harris, 273 N.C. 20, 159 F.D.2d 539 (1968) is distinguishable. The  
3 operative event should be the date of receipt of the determination  
4 by appellant. The statutes regarding appeals provide for such. The  
5 DOE's rule requiring the use of certified mail, though not inconsistent  
6 with the statute, should not be interpreted to add such requirement  
7 to the statutory procedures. It is better read, as respondent contends,  
8 as adopting a practice whereby the agency could easily establish date  
9 of receipt of its decision. For the foregoing reasons the Motion to  
10 Dismiss the appeal should be granted for lack of jurisdiction of this  
11 Board to hear the appeal.


12 Although not mentioned by counsel, we believe that the DOE  
13 can improve on the format of its tax application rulings, or provide  
14 a cover letter addressed to the applicant which emphasizes that the  
15 attached ruling is a final order subject to further appeal.

16 It is Ordered that: the Motion to Dismiss is granted and the  
17 appeal is dismissed.

18 DATED this 8<sup>TH</sup> day of March, 1979.

19 POLLUTION CONTROL HEARINGS BOARD

20   
21 DAVE J. MOONEY, Chairman

22   
23 CHRIS SMITH, Member

24   
25 DAVID AKANA, Member

26 ORDER GRANTING MOTION  
27 TO DISMISS